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ARBITRATION

BEFORE

The Honorable Edward D. White
Chief Justice of the Supreme Court of the United States

OF THE DIFFERENCES BETWEEN

The Republic of Panama

AND

The Republic of Costa Rica

Respecting the interpretation and application of
the award made by Emile Loubet, President
of the French Republic, on September 11, 1913,
concerning the boundary between the territories
of the two parties :: :: :: :: ::

Statement on Behalf of the Republic of Panama

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THE HONORABLE EDWARD D. WHITE, CHIEF JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES,

OF THE DIFFERENCE BETWEEN THE

REPUBLIC OF PANAMA AND THE REPUBLIC OF COSTA RICA

RESPECTING THE INTERPRETATION AND APPLICATION OF THE AWARD MADE BY ÉMILE LOUBET, PRESIDENT OF THE FRENCH REPUBLIC, ON SEPTEMBER 11TH, 1900, CONCERNING THE BOUNDARY LINE BETWEEN THE TERRITORIES OF THE TWO PARTIES.

STATEMENT ON BEHALF OF THE REPUBLIC OF PANAMA.

I. THE SUBJECT OF THIS ARBITRATION.

The present arbitration arises upon a convention made at Washington on March 17th, 1910, between the Republic of Panama and the Republic of Costa Rica.

Article I. of this convention states the question submitted to arbitration as follows :

“ What is the boundary between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900 ? ”

The question does not, however, involve the whole boundary line, for the Article further states that the two Republics consider the line described by President Loubet

“ clear and indisputable in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera near the ninth degree of north latitude.”

It is, therefore, only that part of the Award of President Loubet which relates to so much of the line described by him as lies between the Atlantic and this

point on the Central Cordillera which is now submitted for interpretation by the present Arbitration.

Article I. further provides that :

“ In order to decide this the Arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé, Minister of Foreign Relations of France, to His Excellency Señor Peralta, Minister of Costa Rica in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Colombia and the Republic of Costa Rica of January 20, 1886.”

This arbitration, therefore, starts from the Award of President Loubet as a fixed *datum*. That Award is final, binding and conclusive. It is not to be impeached or questioned. By the present convention both parties formally and solemnly record their acceptance of it and only seek to have solved their differences concerning its exact and true meaning and purpose, that they may abide by and conform to it. Where they are already agreed as to its “ correct interpretation and true intention,” they ask nothing more. Where they differ as to this “ correct interpretation and true intention,” they ask that the Arbitrator decide. When he has fully elucidated President Loubet's Award, the controversy between them is over. By the very terms of the present convention that Award is recognized as final, and the only question is as to what compliance with it requires.

The Arbitrator is asked to fix the boundary line “ under and most in accordance with the correct interpretation and true intention ” of President Loubet's Award.

It was recognized that, by possibility, some part of the description of the line in the Award might not exactly accord with the physical characteristics of the country through which it runs. As was stated in the letter of M. Delcassé, the French Minister of Foreign Affairs to Señor de Peralta, the Costa Rican Minister, of November 23rd, 1900,¹ to which Article I of the present convention refers, the lack of detailed information compelled President Loubet to describe the line fixed by him, in general terms. Therefore, it might be that the present Arbitrator would find not precisely the geographical features described by President Loubet, or, perhaps, assumed by him as the basis of his Award.

¹ *Post*, p. 7.

In such case it might be that merely the "correct interpretation", in a verbal sense, of President Loubet's Award, would not suffice to solve the difference between the two Republics. For such a contingency it is provided that the present Arbitrator may have recourse, not merely to an interpretation of the language of the Award, but to its "true intention", and, if he cannot fix an exact line precisely as the Award describes it, he is to fix such line as shall be "most in accordance with" not only the "correct interpretation" but also the "true intention" of the Award made by President Loubet.

The Convention further provides that in fixing the line the Arbitrator

"will take into account all the facts, circumstances and considerations which may have a bearing upon the case."

This, however, really adds nothing to what had been before expressed. It would be impossible for the Arbitrator to ignore these things in interpreting the Award and determining its "true intention".

If, indeed, the Arbitrator find that the "correct interpretation" of the Award is plain, and that no ambiguity, patent or latent, exists, extraneous circumstances cannot justify assigning to it any other effect than that which its words import. To do otherwise would be, not to interpret, but to modify the Award, and so to do what the Convention does not contemplate nor authorize.

But if an ambiguity should appear, or if, because, in any part, the line cannot be drawn exactly as described in the Award, it becomes necessary for the present Arbitrator to determine the line "most in accordance with" "the true intention" of President Loubet, then, to resolve the ambiguity or to determine the "true intention," he must, necessarily and even if the convention had not expressed it, "take into account all the facts, circumstances and considerations which may have a bearing upon the case."

These words of the Convention, therefore, do not affect the scope of the Arbitration nor bring into it anything which would not otherwise have been there. They neither restrict nor enlarge the powers of the Arbitrator. No appeal to extraneous circumstances can prevent him from following the exact terms of the Award, if he find them clear, unambiguous and applicable to the geographical situation as it exists. As little can they justify any departure from or modification of the Award, where it can be applied according to its terms.

The further reference in the Convention to the limitation of the award expressed in the letter of M. Delcassé to Señor de Peralta,¹

“that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Colombia and the Republic of Costa Rica of January 20, 1886”,

which the Arbitrator is also to take into account, has a higher significance.

If President Loubet had undertaken to award to either party territory not in dispute, a case of *ultra petita* would have arisen. What would or might have been the result had such a thing occurred and had either party undertaken to object on that ground, is a question not now arising.

The significance of this provision of the present convention is two-fold.

First; it recognises the limitation in question as incorporated in and forming part of the Award, so that, even if the objection of *ultra petita* could now be available and were otherwise well-founded, it can no longer be said to exist. Under no circumstances, can the Award be construed as laying down a line which is outside the limits fixed. It is as if a proviso to that effect were expressly contained in the Award; and the parties agree that it was, in fact, the intention of the Arbitrator to draw the line wholly within the territory in dispute.

Second; the provision in question constitutes a new affirmation by the parties that no defect of *ultra petita* exists in the Award and if the language of the Award could be so construed as, otherwise, to entail it, still the Award would not be impaired thereby. If the line described by President Loubet did, in any part, lie outside the territory in dispute, this limitation would prevent any difficulty from that cause. The “true intention” of the Award being established, that the line should lie “within the confines of the territory in dispute,” it would then be for the present Arbitrator to modify that part of the line so that it should accord with that intention, but nothing more would be needed. It would be merely an occasion for the exercise of the present Arbitrator’s powers, but would not interfere with the course of this arbitration nor at all invalidate President Loubet’s Award.

That the line described in the Award involves no *ultra petita*, is, we think, unquestionable, but, if it did, it would, in view of this provision, constitute merely such

¹ *Post*, p. 7.

a difficulty as would arise if there had been a reference to some natural feature of the country which does not, in fact, exist. That is, the language of the Award could not be literally followed, and it would become the duty of the Arbitrator to select such line as should be "most in accordance" with the Award and should avoid the difficulty.

That occasion will not arise; but the provision in question has importance in that it removes all question of *ultra petita* from the case and shows the intention of both parties that no technical objection shall be allowed to impair the full effect of the Award, but that it shall stand in all its force according to its "correct interpretation and true intention", as the Arbitrator shall determine them to be.

With the original question of boundaries, submitted to President Loubet, we have, then, nothing to do. Upon this arbitration we do not know, and have no occasion to inquire, what were the merits of that controversy, what documents or other proofs were before President Loubet, nor what his reasons were for his decision.

Nor are we at liberty to consider anything concerning the regularity or validity of his Award. All those matters are settled by the Convention, which takes the Award as a perfect and complete adjudication and leaves for consideration here only its interpretation and application. We are, indeed, to consider what was the question submitted to President Loubet and what was the territory in dispute before him, in order to see whether the limitation of the Award stated in M. Delcassé's letter to Señor de Peralta has, in fact, any practical application; but no further.

It is not a question, upon this arbitration, whether President Loubet rendered a right award, nor even a valid award; by the Convention both parties have agreed that the Award was both valid and right and have removed those questions from the field of debate.

Indeed, could the Award be questioned in any way, this arbitration could have no purpose and must end; for the question submitted to the Arbitrator does not include such questions and it would be futile for him to interpret an award which was not in the first place accepted as binding and perfect. His own award would be ineffective if it construed and applied an award which might itself be set aside.

No such futile proceeding was contemplated. The Award of President Loubet is, by the mere fact of the present arbitration, as well as by the terms of the Convention under which it takes place, made binding, perfect and not open to question in any way or upon any ground.

It remains, therefore, next to consider what that Award is and upon what controversy it was made.

II. THE LOUBET AWARD.

The Award of President Loubet was the result of an arbitration between the Republic of Colombia (then the sovereign of the territories now constituting the Republic of Panama) and the Republic of Costa Rica, of the question of the boundary between them, which had been a subject of dispute ever since they had come into independent existence.

The original convention of arbitration of this question was that signed at San José on December 25th, 1880, between the United States of Colombia (the predecessor of the Republic of Colombia) and the Republic of Costa Rica, by which the King of the Belgians, or, should he decline, the King of Spain was selected as arbitrator.¹

The King of Spain having accepted the office, proceedings were begun before him, but were not concluded before his death, and by an additional convention, signed at Paris on January 22d, 1886, it was agreed that, notwithstanding the King's death, the arbitration might proceed before "the Government of Spain."²

By a further convention, however, signed at Bogotá on November 4th, 1896, between the Republic of Colombia (which had, in the meantime, succeeded the United States of Colombia) and the Republic of Costa Rica, the designation of "the Government of Spain" as arbitrator was changed and the President of the French Republic was substituted in that office.³

Before him the arbitration proceeded and resulted in the Award made by him at Rambouillet on September 11th, 1900,⁴ which is the subject of the present arbitration.

The convention of December 25th, 1880, contained no statement of the claims of the respective parties, only stating in Article I that they

"agree to submit to arbitration, the question of boundaries existing between them, and the fixing of a line which shall divide, permanently and clearly, the territory of the first from that of the second."

The convention of January 22d, 1886, however, contained a definition of the question in dispute, in the following terms :

"ARTICLE II.

The territorial limit which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island Escudo de Veraguas, and the

¹ Appendix A, p. 27.

² Appendix B, p. 30.

³ Appendix C, p. 32.

⁴ Appendix D, p. 35.

River Chiriqui (Calobebora) inclusive ; and on the Pacific side, as far as the River Chiriqui Viejo, inclusive, to the East of Point Burica.

The territorial limit which the United States of Colombia claim reaches, on the Atlantic side, as far as Cape Gracias á Dios, inclusive ; and on the Pacific side, as far as the mouth of the River Golfito in Gulf Dulce."

" ARTICLE III.

The arbitral award shall confine itself to the disputed territory that lies within the extreme limits already described, and cannot affect in any manner any rights that a third party, who has not taken part in the arbitration, may set up to the ownership of the territory comprised within the limits indicated."¹

These articles were confirmed by Article V of the convention of November 4th, 1896.

The Award of President Loubet (so far as is here material) was as follows :

" The frontier between the Republics of Colombia and Costa Rica shall be formed by the counterfort of the cordillera which starts from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Rio Sixola, then by the chain of division of waters between the Atlantic and the Pacific to 9 degrees, about, of latitude ; it will follow next the line of division of waters between the Chiriqui Viejo and the affluents of Gulf Dulce, to end at Point Burica on the Pacific Ocean ".²

On September 29th, 1900, Señor Don Manuel M. de Peralta, then Costa Rican Minister at Paris, addressed a letter to M. Delcassé, then French Minister of Foreign Affairs, asking approval of a boundary line, described by him with some particularity, but differing from President Loubet's indicated line, as that meant by the Award.³

To this letter M. Delcassé replied, on November 23rd, as follows :

" PARIS, November 23, 1900.

MR. MINISTER :

Answering the request which you have been pleased to express in your letters of September 29th and October 23rd, ultimo, I have the honor to inform you that, on account of the lack of exact geographic data the Arbitrator has not been able to fix the boundary except by means of

¹ Appendix B, p. 31.

² Appendix D, p. 36.

³ Appendix F, p. 38.

general indications. I think, therefore, that there would be difficulty in fixing them on a map. But there is no doubt, as you have observed, that, in conformity with the terms of articles 2 and 3 of the Convention of Paris of January 20, 1886, this boundary line must be drawn within the confines of the territory in dispute, as they are determined by the text of said articles.

It is in accordance with these principles that it is for the Republics of Colombia and Costa Rica to proceed to the physical delimitation of their frontiers, and the Arbitrator trusts, on this point, to the spirit of conciliation and good understanding with which the two Governments in litigation have up to the present been inspired.

Accept the assurances of the high consideration with which I have the honor to be, Mr. Minister, your very humble and obedient servant.

(Signed) DELCASSÉ.

MR. MANUEL DE PERALTA,
Minister of Costa Rica in Paris."

The foregoing data, we believe, comprise everything which bears directly upon the Award, its genesis, making and intent, except in so far as the surveys made under the direction of the present Arbitrator serve to make clear the application of the Award to the actual geographical situation as now ascertained in detail.

III. "THE CORRECT INTERPRETATION AND TRUE INTENTION" OF THE AWARD.

The question now to be considered is, as stated in the convention under which this arbitration is held; what is the boundary line to be, under this Award?

We are, by the terms of the convention, dispensed from a consideration of so much of the line as lies between Point Burica and a point beyond Cerro Pando on the central cordillera near the ninth degree of north latitude. So much of it is agreed by the parties to be "clear and indisputable."

Our attention, then, is to be confined to that part of the line which lies between this point on the central cordillera, north of Cerro Pando, near the ninth degree of north latitude, and Punta Mona on the Atlantic.

As to this part of the line two questions may arise:

FIRST; is it drawn, as described in the Award, wholly within the confines of the territory in dispute, as determined by Articles II and III of the convention of January 20, 1886?

SECOND; if the line, as described in the Award, does so lie wholly within the territory in dispute, can it be identified, in more detail, so as to be as "clear and indisputable" as the parties have agreed that the remainder of the line already is?

Upon the former of these questions we conceive that no doubt or debate is possible.

Article II of the convention of January 20th, 1886, states that—

“ The territorial limit which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island of Escudo de Veraguas, and the River Chiriqui (Calobebora) inclusive ; and on the Pacific side, as far as the River Chiriqui Viejo, inclusive, to the East of Point Burica.

The territorial limit which the United States of Colombia claim reaches, on the Atlantic side, as far as Cape Gracias á Dios, inclusive ; and on the Pacific side, as far as the mouth of the River Golfito in Gulf Dulce.” ¹

Article III only provides that the award shall be confined to the disputed territory within the limits fixed by Article II, and cannot affect the rights of third parties. It is merely declaratory of what would be the rule, in any case. The reason for expressing it will be seen by a glance at the map. Colombia claimed the whole Atlantic coast to Cape Gracias á Dios, which lies far north of the northern boundary of Costa Rica, and it was desired to avoid even the appearance of an attempt to pass upon the rights of Nicaragua in the territory occupied and claimed by that republic.

It will be noted that the only limitation which these Articles imposed upon the Arbitrator was with regard to the terminal points of the boundary which he should fix. He could not, upon the Atlantic, fix a line which should begin south or east of Escudo de Veraguas or the mouth of the river Chiriqui, nor north of the northern frontier of Costa Rica ; nor could he fix any line which should meet the Pacific at a point south of the Chiriqui Viejo or north of the Golfito.

But except in this respect his jurisdiction was unlimited. No claim was made by either party as to interior lines and nothing in the treaty prescribes any rule upon the subject. So long as the terminal points upon the two coasts were within those stated, he was at complete liberty, in the interior, to connect them by a line running in whatever course he should think proper.

The line actually fixed by the Award begins, on the Atlantic, at Punta Mona, which is north of the Chiriqui and, of course, far south of the northerly limit on that side. The line ends on the Pacific at Punta Burica, which is north of the Chiriqui Viejo and south of the Golfito. Thus the line is, and cannot but be, confined to the disputed territory and it does not touch the territory of any foreign power.

As we have pointed out, no objection of *ultra petita* to the Award could, in any event, be maintained. The terms of the convention preclude it, and so the consider-

¹ Appendix B, p. 31.

tion of the question under examination is not necessary for the purpose of establishing the validity of the Award. That is unassailable.

But if any part of the line fixed by President Loubet did, in fact, lie outside the limits fixed by the convention of 1886, that part would require modification and it would be necessary for the present Arbitrator to substitute for it such line as he should determine to be "most in accordance with" what he should find to be the "true intention" of the Award.

Since an examination of the provisions of the convention of 1886 shows that the line fixed by President Loubet did not and could not, having the termini which he determined for it, lie, in any part, without the territory in which he was authorized to draw it, it only remains to ascertain and define with greater particularity the line which he described.

We come, then, to the second question above stated and are to consider whether the part of the line fixed by President Loubet which lies between Cerro Pando and the Atlantic can be identified, in more detail, so as to be as "clear and indisputable" as the parties have agreed that that portion is which lies between Cerro Pando and the Pacific.

The Award declares that this line

"shall be formed by the counterfort of the cordillera which starts from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Rio Sixola, then by the chain of divisions of water between the Atlantic and the Pacific to 9 degrees, about, of latitude. * * *"

It is difficult to see any obscurity or uncertainty in this description. A latent ambiguity, owing to a lack of correspondence between the description and the configuration of the country, is always possible in any description, but, given the existence of the natural features mentioned, there is no lack of definiteness or clearness in this description of the line.

It is made plain that the point at which the line begins on the Atlantic is Punta Mona, just as the point at which it ends on the Pacific is Punta Burica. It is made plain that from that point it follows the summit of the counterfort or spur of the cordillera, one end of which is at Punta Mona, until it reaches the cordillera, and that it then follows the crest of the water-shed formed by the cordillera to a point near the ninth degree of north latitude.

If we compare the description of this part of the line with that which the parties

have declared "clear and indisputable", we shall find equal clearness in both. This "clear and indisputable" part of the line, as fixed, is to "follow the line of division of waters between the Chiriqui Viejo and the affluents of Gulf Dulce, to end at Point Burica on the Pacific Ocean." The description of the part of the line now under consideration is no less clear.

There is, then, nothing in the description, as it is written, to give rise to any difficulty. Throughout its course, the line follows, according to modern practice in boundaries, the lines of watersheds. From Punta Mona to the cordillera, it follows the line which divides the waters flowing into the Tarire or Sixola from those flowing into the next river to the north; from the junction of this line with the cordillera, it follows the line which divides the waters flowing into the Atlantic from those flowing into the Pacific, until it reaches "9 degrees, about, of latitude", and thence it follows "the line of division of waters between the Chiriqui Viejo and the affluents of Gulf Dulce", ending at Punta Burica. There is no uncertainty, no lack of clearness in any part of the description.

It is to be noted here that the description of the line in the award has been, in effect, officially accepted by Costa Rica as clear and satisfactory.

In the official letter of Señor de Peralta, Costa Rican Minister at Paris to M. Delcassé, French Minister of Foreign Affairs, mentioned in Article I. of the present Convention and to which we have already referred, there is a detailed description of a boundary line, differing widely, in important points, from that of the Award, but which adopts the language of President Loubet as to "the counterfort of the cordillera which starts from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Sixola."

The new description purported to be an "interpretation" of the Award and to be written in order "to avoid all possible confusion with respect to the intentions" of the Arbitrator, and while it is obvious that it is not an interpretation of, but a proposed substitute for the line described in the Award, it is certain that no language was used in it which was not considered by Costa Rica to be clear, definite and free from ambiguity or other difficulty.

Now this description, proposed by Costa Rica, begins as follows :

"The boundary between the Republic of Costa Rica and Colombia shall be formed by the counterfort of the cordillera which runs from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Sixola."¹

¹ Appendix F, p. 38.

We need not consider, here, the departure, in a subsequent part of this description, from the line fixed by the Award. What is important now is that Costa Rica, in endeavoring to make a description which should be perfectly clear and "avoid all possible confusion," found the language of the Award itself most apt for that purpose. The Award, then, in describing a line "formed by the counterfort of the cordillera which starts from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Rio Sixola, employed language which, to Costa Rica, was perfectly clear and definite.

That is the present contention of Panama, as it was always that of Colombia. That was the view of Costa Rica at the time when the Award was made. It would be singular if she were now to be permitted to take a different attitude and to say that she herself, in formulating a description of the line which should be free from all doubt or uncertainty, had used language which is uncertain, misleading or cannot be applied.

Costa Rica was then, as she is now and has been ever since, in physical possession of the territory through which the line runs. She knew the characteristics of the country and was in a position to describe its features, and to select language which should define the line, with perfect clearness and certainty. Unless a deliberate purpose to use language which should give rise to difficulty and confusion were to be attributed to her (and such an imputation would be wholly inadmissible), it must be assumed that the description proposed by her was, at any rate, clear and certain.

It is thus, we submit, demonstrated that the language of the Award is clear and free from doubt, by the agreement of all parties. There is left only the question of its application to the *situs*.

If the line, as described, fits the physical configuration of the country, there remains only to describe it in more detail to settle the controversy.

IV. THE COMMISSION OF ENGINEERS.

Since M. Delcassé declined to go into a closer description of the line, for lack of data, and considered it, for that reason, inadvisable to attempt to lay it out on the map, it was obvious that, in view of Costa Rica's attitude, further and more detailed information as to the physical characteristics of the territory through which the line runs, was required.

Had there been a Commission of Delimitation appointed, as contemplated by the Award, this information would have been developed in the course of its work, and it is

at least conceivable that no real difficulty would have been found in laying out the line fixed by the Award. Indeed, in view of the report of the Commission of Engineers appointed by the present Arbitrator, we may say that it is clear that there would have been no such difficulty.

But Costa Rica declined to join in the appointment of a Commission of Delimitation, and the present arbitration became necessary. Since the sole purpose of this arbitration is to construe and apply the Award of President Loubet, since it was occasioned by the inability of the parties to agree as to what line is fixed by that Award, and since it appears, by M. Delcassé's letter, that a lack of sufficient data prevented a description in the Award in any but general terms and made it inadvisable to attempt to trace it on the map, the necessity of a survey was obvious. Without such information as a survey alone would furnish, the present Arbitrator would find himself in the same embarrassment as was President Loubet, in defining the line with precision.

In order, therefore, that this arbitration might certainly and finally remove all such difficulties, it was necessary that the present Arbitrator should be furnished with such full and complete data as would make it possible for him to go further than President Loubet had done in the detailed definition of the line. The convention, accordingly, provided, in Article II, for a survey by a commission of engineers, one to be appointed by the President of Panama, one by the President of Costa Rica, and two by the Arbitrator; all to be competent and impartial persons, not citizens of either of the countries interested. Such a commission was to be appointed at request of either party or by the Arbitrator, *sua sponte*; it was to conduct the survey as the Arbitrator should direct, and to report, with maps of and data concerning the region surveyed.

Panama, being desirous that everything should be furnished which might be necessary to a final and complete settlement of the question, requested the appointment of the Commission, immediately upon the ratification of the convention.

The Commission were appointed, made their survey of the whole territory in question, and have made their report to the Arbitrator, with full and detailed maps. With the report is included the report of the geologist of the Commission, and there are also presented supplementary reports, one by Mr. Hodgdon, the member of the Commission appointed by Panama, and one by Mr. Ashmead, the member appointed by Costa Rica. These supplementary reports contain matters which the other members of the Commission did not desire to put in their report, and that of Mr.

Ashmead contains some expressions of dissent from the report of the geologist and from some conclusions of Mr. Hodgdon. Both Mr. Hodgdon and Mr. Ashmead answer certain questions propounded for Panama and Costa Rica, to which the other Commissioners were not willing to make answers of any sort.

The Commission, with their report, also submitted a series of maps of the whole region under consideration which, with the report itself, will, we believe, furnish the Arbitrator all the data necessary to a decision of the question before him.

V. THE PURPOSE AND RESULTS OF THE SURVEY.

By the Award of President Loubet, the boundary is to be formed

“by the counterfort of the cordillera which starts from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Rio Sixola, then by the chain of division of waters between the Atlantic and the Pacific to 9 degrees, about, of latitude; it will follow then the line of division of waters between the Chiriqui Viejo and the affluents of Gulf Dulce, to end at Point Burica on the Pacific Ocean.”¹

In accordance with the usual practice, at the present day, this boundary follows the summit of successive water-sheds. The meaning and purpose of the Award cannot be doubtful. It uses the words “counterfort,” “chain of division of waters,” “line of division of waters,” but its design is plain. In each case, it follows the summit of a water-shed, and this is the only thing material.

In the region near the Atlantic, the Award states the line as “formed by the counterfort of the cordillera which starts from Cape Mona on the Atlantic and closes on the north the valley of the Rio Tarire or Rio Sixola.” The plain meaning of this is that the arbitrator awarded to Colombia (the predecessor in title of Panama) the valley and water-shed of the river known in its lower course as the Sixola and in its upper course as the Tarire.

Next the line follows “the chain of division of waters between the Atlantic and the Pacific”. Again the meaning is clear. Everything on the Atlantic side of the summit of this divide was awarded to Colombia; everything on the Pacific side to Costa Rica.

The remainder of the line we need not consider, since the parties have agreed that it is clear, but it may be noted that the same principle is there carried out. The summit of the water-shed between the Chiriqui Viejo and the affluents of Gulf

¹ Appendix D, p. 36.

Dulce is followed; all on the side of the Chiriqui Viejo being awarded to Colombia, all on the side of Gulf Dulce to Costa Rica.

We may not unreasonably wonder that any one who found the latter part of the description of the line clear, should have any difficulty with the rest. If it be easy, as it certainly is, to understand a line which follows the division of waters between the Chiriqui Viejo and the affluents of Gulf Dulce, what difficulty can there be in understanding one which follows the division of waters between the Atlantic and Pacific, or which follows the counterfort which closes on the north the valley of the Sixola? The slight differences in language between "counterfort which closes on the north the valley of the Rio Tarire or Rio Sixola," "the chain of division of waters" and "the line of division of waters" is not enough to cause any uncertainty.

It cannot be material whether the divide between the Sixola and the valley of the next river to the north be formed by what is technically called a "counterfort of the cordillera" or not. That can be no element in describing the boundary. The meaning of the Award is plain; it was intended that the line should follow the northern limit of the water-shed of the Tarire or Sixola. In fact, as we shall have occasion to point out later, that limit is formed by a "counterfort of the cordillera," but if it were not and if President Loubet had been technically in error in so designating the elevation, there would still be no uncertainty. It is too obvious for argument that he meant the line to follow the summit of the elevation, however it might be technically called, which bounds on the north the valley of the Sixola or Tarire.

So with the expression "the chain of division of waters between the Atlantic and the Pacific." If the word "chain" were not technically accurate as a designation of this divide, the meaning of the Award is no less clear. It is the divide which is to be followed, and however the elevations forming it are to be technically designated, there can be no question of the meaning of the Award.

Any other interpretation would be without foundation in reason. To suppose that President Loubet, in calling the elevation which closes on the north the valley of the Sixola, a "counterfort," meant that designation to be the controlling feature, so that he chose it because he supposed it to be what is technically so called and not because, from its relation to the water-shed, it formed a natural line of division; to suppose that when he fixed another part of the boundary by the "chain of division" between the waters of the Atlantic and the Pacific, it was the fact that it was a chain and not the fact that formed a division which controlled him, would be

to attribute to him an absurdity. That would not be reasonable. It is too plain to need argument that the controlling element in the description of both these parts of the line is that, for the one part, the elevation, however it might be called, closed on the north the valley of the Sixola, and, for the second part, that the elevation there mentioned, whether strictly a chain or not, divided the waters of the Atlantic slope from those of the Pacific.

The task of the Commission, therefore, was to ascertain whether there was a divide running from Punta Mona on the Atlantic to the cordillera, which closed on the north the valley of the Sixola, and whether there was, from the place of junction of this divide with the cordillera, a divide running to the point near the ninth parallel of latitude, as to which the parties are agreed (near Cerro Pando), forming a division of waters between the Atlantic and the Pacific. If so, the elements for a further definition and ultimate demarcation of the line of the Award would be supplied. If not, then a latent ambiguity would be disclosed which the present Arbitrator would be called upon to solve.

From the point near the ninth degree of north latitude, near what is called Cerro Pando, to the place of intersection of the divide which closes on the north the valley of the Sixola, called Chirripó Grande, the line of division between the waters of the Atlantic and those of the Pacific was ascertained. As to this, no dispute and no argument is possible. The report is precise and there is nothing to countervail it.¹

The valley of the Sixola is closed on the north by a divide which extends from Chirripó Grande to Punta Mona. Just back of Punta Mona it is apparently (but only apparently) interrupted by a swamp, sometimes traversable and sometimes not, according to the rains and the amount of water which it carries, but nowhere more than two and one-half kilometers—about a mile and a half—in width. Across this swamp, which (as we shall point out later) is only a “saddle” of the ridge of which Punta Mona forms part and which extends from Chirripó Grande to and into the sea, differing from the other saddles of this ridge only in elevation, the Commission have traced on their maps an arbitrary straight line from Punta Mona to where the divide rises again. From that point to Chirripó Grande there is no point of submergence. The divide for all that distance is plain, and the line of the summit of the watershed can be and has been located and laid down on the Commission's maps.²

¹ Report of Commission, p. 49.

² *Ibid.*, p. 50. Maps 1 and 2, *post* (taken from Commission's maps).

It may be that for this short distance of low saddle covered by swamp the true summit of the divide cannot be located. It may be that the present Arbitrator will be called upon here to define and trace, in accordance with the "correct interpretation and true intention" of President Loubet, the line across these few furlongs of swamp. But no such short break in the continuity of the visible elevation can give rise to any doubt concerning, or ambiguity in, the Award, nor in the line from Punta Mona to Chirripó Grande, as a whole.

To fix such a line as that across this swamp, under such circumstances, is precisely what is to be done upon this arbitration, and it can matter little, if at all, to either country, whether the line, as so fixed, awards to one or the other a few acres more or less of this submerged land, worthless for any purpose. The solution adopted by the Commission appears to us reasonable and suitable, but we submit the matter to the wisdom of the Arbitrator.

It would appear that President Loubet was not aware of the existence of this swamp, and that he supposed the divide, spur or counterfort to be visible to Punta Mona itself. That may well have been, for only on maps on a large scale could it be indicated. The letter of Mr. Deleassé to Señor de Peralta states that the boundary could be fixed, precisely from lack of such details, only in general terms.¹ The omission to note and provide for this situation has, therefore, no significance, and the Award must be given effect, without regard to such a detail, in accordance, as the present Convention provides, with its "correct interpretation and true intention".

As to what that interpretation and intention are, with respect to the line from Punta Mona to Chirripó Grande, there can be no doubt. The intention is so plainly expressed that a "correct interpretation" of the Award of itself reveals the "true intention." It was the purpose to award to Colombia the entire water-shed of the Sixola, from the cordillera, or central chain of mountains, to the sea, by a line which should begin at Punta Mona. By the maps which President Loubet had before him, it appeared, no doubt, that the ridge, along the summit of which the line must run in order to attain this result, was visibly continuous from Punta Mona to the cordillera. He, therefore, fixed this ridge as the dividing line; and as a "general indication" (to use the expression of M. Deleassé), this was sufficient.

Had "the spirit of conciliation and good understanding" to which M. Deleassé said that the Arbitrator trusted for the physical delimitation of the frontier, pre-

¹ *Ante*, p. 7.

vailed, no question would ever have arisen. The little, worthless space of submerged ground back of Punta Mona would have caused no difficulty. It was the unwillingness of Costa Rica to comply with the Award and her evasions of the demands of Colombia and of Panama for compliance, which finally brought about this second arbitration.

President Loubet described the line as following "the counterfort of the cordillera which starts from Punta Mona and closes on the north of the valley of the Rio Sixola or Rio Tarire." As we have said, it is obviously immaterial whether the elevation designated is technically to be called a "counterfort" or not. It has, at any rate, that appearance and is as apt for the purpose which it serves in the Award. It does "close on the north the valley of the Rio Sixola or Rio Tarire," it is visibly continuous from the cordillera at Chirripó Grande to a point within a short distance of Punta Mona itself, and there is no difficulty in tracing the boundary along its crest.

There can be not the least uncertainty as to what elevation, ridge or counterfort is meant by the Award. The report of the Commission shows that there is but one which could possibly be said to "close on the north the valley of the Rio Sixola or Rio Tarire," and that is the one which runs to Punta Mona. Confusion or doubt is impossible. If it be a question of the "correct interpretation" of the Award, the elevation in question must be taken. If it be a question of the "true intention" of the Award the same result must follow.

It is, we believe, as we have said, immaterial whether the elevation in question is technically a counterfort or whether it does, in fact, actually touch Punta Mona, if it be such that it can serve all the purposes of a boundary which a counterfort, technically so called, can serve and if it approach so near Punta Mona as to give rise to no practical difficulty in drawing a line across the intervening space to connect the two. These two conditions being satisfied, as the report and maps of the Commission show that they are, and the meaning of the Award being perfectly clear, as it is, any discussion as to whether President Loubet was literally accurate in using the word "counterfort" and in saying that it "starts from Punta Mona," becomes impertinent. These are mere matters of purely verbal accuracy which, when the meaning and application of the Award have been determined, become irrelevant to the question before the present Arbitrator.

But, if they are to be considered, it will be found that in these immaterial particulars also, President Loubet was entirely accurate. No doubt he would have

considered such details too trivial, as, indeed, they are, to deserve any great care from him ; but at any rate he has attained accuracy as to them also. The report of the geologist of the Commission, which they submitted with their report and which, therefore, has the same authority (except with regard to Commissioner Ashmead, the member appointed by Costa Rica, in so far as he has expressed his dissent from it) makes this clear.

The geologist finds this divide to be one and uniform, stretching from the Cordillera to and into the sea, and including Punta Mona. The irregularity in its outline, by which it appears to run frequently parallel with the cordillera, and the many " saddles " (which are characteristic of almost all long, continuous elevations) were caused by erosion of streams. The crest of the divide was once, in some places, at least, north of its present situation, but the present as well as the past form, resulted from the dissection, through erosion, of a former plateau or plain reaching from the mountains to the sea. The part between Punta Mona and the continuously high lands to the west, is merely a saddle, exceptionally low, which has, by reason of its slight elevation, become covered with a swamp ; but the same elevation which is visible from the cordillera to this point, reappears again in Punta Mona, and beyond that, in islands beyond, after which it probably continues under the sea, but does not again reach a sufficient elevation to become visible.¹

Thus it appears that President Loubet correctly designated the elevation in question as a " counterfort of the cordillera ", and correctly described it as starting from Punta Mona. The mere fact that the saddle back of Punta Mona is so low as to be covered by a swamp does not affect the real continuity of the counterfort, nor does it lose its character because, in consequence of erosion, its superficial appearance, in some places, is that of ridges parallel with the cordillera, connected by saddles of a different axial direction.

So far as the Republic of Costa Rica is concerned, it is precluded, as we have already pointed out, from raising any question as to whether there is a " counterfort of the cordillera which starts from Punta Mona ", for in the official letter of its Minister at Paris to the French Minister of Foreign Affairs of September 29, 1900, written by direction of his government, and proposing a different description of the boundary, he describes this elevation in precisely the same words, as " the counterfort of the cordillera which starts from Cape Mona." ²

¹ Appendix No. 2 to Report of Commission, pp. 17-22, 43, 44 ; Statement of Commissioner Hodgdon, pp. 5, 8.

² Appendix F, p. 38.

One other circumstance alone appears to call for attention in connection with the counterfort, although its importance is so slight as to deserve no extended consideration.

From a point near the swamp behind Punta Mona there run out several branches of the counterfort, similar, as the maps show, to the various branches or sub-spurs which are found all along its course. Between these branches two or three small streams rise, to the south of the swamp directly behind Punta Mona, such as Gadocan Creek and Middle Creek, which do not flow into the Sixola, but directly into the sea.¹ The ground is very flat, the distance very short, and very slight differences in level determine the discharge of these little streams. In ancient times, the report of the geologist shows, these streams discharged into the Sixola, and even now, in high water, the Sixola and Gadocan Creek mingle.² When the few furlongs of swamp behind Punta Mona, which cover the low saddle of the counterfort, have been passed, all the streams to the south of the divide flow always into the Sixola.

The subject of these little streams, as we have said, does not deserve extended consideration. If the Sixola, close to its mouth, flows through a very flat country and if a few small streams have, through this flat country, cut themselves channels to the sea, these are circumstances of no moment, and cannot affect the question under consideration. The Commission of Engineers says that "broadly speaking, the small areas drained by these streams would in general be understood as included when speaking of the valley of the Sixola."³ Commissioner Ashmead objects to this statement, but the rest of the Commission adopt it.

It is to be noted that the phrase of the Award, "which closes on the north the valley of the Sixola," is merely descriptive. There is no doubt whatever that the counterfort shown on the maps which starts from Punta Mona, and the other extremity of which is at Chirripó Grande, does close on the north the valley of the Sixola, that no other counterfort or elevation does so and that this is the one specified by the award. The little space which has just been mentioned is negligible; but if it were of more importance, it would still be true that the counterfort in question is the one intended, because it substantially, if not literally, answers the description of the

¹ Report of Commission, p. 50. Map No. 2, *post* (taken from Commission's map).

² *Ibid.*, p. 56.

³ *Ibid.*, p. 51.

Award. "General indications" are all that President Loubet undertook to give, and this designation, if not minutely accurate, is too plain to leave any room for doubt or confusion. It is, at any rate, sufficiently accurate to make the boundary entirely plain. Any objection based upon the existence of the swamp or of Gadocan or Middle Creek, would be in the highest degree technical. We do not believe that any such objection could have any force or be of any weight, but from such arguments upon these points, Costa Rica has cut herself off by her previous contention.

For the description of the boundary proposed in the letter of Señor de Peralta to M. Deleassé begins with "the counterfort of the cordillera which starts from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Sixola near the mouth of that river."¹ That is precisely the territory under consideration, and it is not now open to Costa Rica to say that the description of the line, in that part, proposed by herself is insensible or uncertain.

Upon the boundary proposed by Costa Rica in Señor de Peralta's letter of September 29th, 1900, it seems hardly necessary to comment further. While expressed as an "interpretation" of the Award, it is, in fact, a wholly different line, the purpose of which appears to be to secure to Costa Rica the upper valley of the Sixola, in spite of the Award, which assigned it to Colombia.

The exact line intended by the description given by Costa Rica is not clear. It begins with the "counterfort of the Cordillera which runs from Cape Mona on the Atlantic Ocean and closes on the north the valley of the river Tarire or Sixola," thus, as we have already noted, admitting that there is such a counterfort and that this description of it, the same which is used in the Award, is sufficiently clear to avoid all confusion or doubt.

But the next course, "thence in a west-southwesterly direction along the left bank of this river," is not clear. At what point it leaves the counterfort is not specified. At any rate the line proposed crosses the Sixola at the confluence of the Yorquin and continues on the divide between the Yorquin and the Uren to the cordillera,² from which point it is described in the language of the Award.

It is plain, of course, that this line, while called by Señor de Peralta an "interpretation" of the Award is very far from being that. The line of the Award never leaves "the counterfort of the cordillera which starts from Punta Mona" until it has reached the cordillera. Its next course is along the cordillera itself. It never

¹ Appendix F, p. 39.

² *Ibid.*

crosses the Sixola or Tarire ; it never runs along the left bank of the Sixola ; it never mentions the Uren nor the Yorquin nor does it anywhere follow the divide between those rivers. ¹

The map shows plainly that the Yorquin and the Uren enter the Sixola or Tarire from the south. Obviously, to follow the divide between the Yorquin and the Uren, to follow the left bank of the Sixola or to cross the latter river, would require a departure from the counterfort " which closes on the north the valley of the Sixola." These things, therefore, are in direct conflict with the Award, which makes the whole counterfort, as far as the cordillera, the line.

The letter of Señor de Peralta was an attempt, hardly disguised, on the part of Costa Rica, to induce President Loubet to revise his Award and to substitute a different line for that which he had fixed. Indeed Señor de Peralta endeavors, in his letter, to justify it by saying that the line which his Government proposes makes nearly " a right line from Punta Mona to Punta Burica, which is, so to say, the fundamental idea of the Arbitrator." ²

There is not the slightest reason for attributing any such purpose to the Arbitrator. On the contrary the line fixed by him is so far from being a straight or right line, that it cannot be supposed that he ever had any such idea. But the attempt to justify the line proposed by Costa Rica by such a consideration, and the fact, which the maps make apparent, that the line fixed by the Award is so far from a right line as to have been drawn, evidently, with no regard to such an idea, make it evident that the Costa Rican proposition was no interpretation, but only an effort to induce the Arbitrator to change his Award after he made it. The maps again show the reason for the effort in the fact that the change would give to Costa Rica the whole upper valley of the Sixola, which the Award did not give to her, but to Colombia.

Señor de Peralta requested of M. Delcassé, in the name of his government, a confirmation of the line described in his letter, which M. Delcassé politely, but with entire distinctness, declined to give. ³ The line then proposed by Costa Rica was thus denied any sanction by the Arbitrator. This disposed of the matter, and it might have been allowed to rest there, as a closed incident which has no longer any importance.

But the letter of Señor de Peralta has a value, in this arbitration, to which we

¹ Appendix D, p. 36.

² Appendix F, p. 39.

³ *Ante*, p. 7.

have already alluded. From the fact that Costa Rica employed the same language as the Arbitrator in describing the "counterfort of the cordillera which runs from Cape Mona on the Atlantic Ocean and closes on the north the valley of the Rio Tarire or Sixola", and in describing the line along the cordillera, it is made plain that there is no ambiguity or uncertainty about the line described in the Award, that Costa Rica had no real doubt about that line, and that her only objection was, not that the line was not plain, but that it was not acceptable. She was in no doubt as to what line President Loubet had fixed—if she had been she would not herself have adopted the same language—but she was unwilling to accept the Award because she was dissatisfied with its terms.

When the Award is read in the light of these circumstances and of the report submitted and maps furnished by the Commission of Engineers, no difficulty can be found in tracing the line which it describes with perfect clearness and certainty.

We put aside, for this purpose, the question of the technical designation of the elevation which forms the northern boundary of the valley of the Sixola. While the report of the geologist of the Commission and the supplementary report of Commissioner Hodgdon make it, we believe, entirely clear that "counterfort of the cordillera" is, from any point of view, a proper designation of this elevation,¹ we still are of opinion that this is a wholly immaterial and unimportant matter. The geological formation of the ridge in question; its geological or physiographical relation to the cordillera or Punta Mona; whether it was, originally, an organic whole or was made up of originally isolated elevations, the spaces between which have been filled up by detritus, alluvion or in any other way; whether at any former time streams flowed through the present "saddles" of the divide; whether, at some earlier period, the divide lay further north or further south; whether the swamp behind Punta Mona covers a true "saddle"; all these things are, we conceive, utterly immaterial to the purpose of this arbitration.

The question before President Loubet was the fixing of a boundary. For that purpose the only thing of importance was that there should be natural features of the country to define it, if such could be found. Intending to award to Colombia everything south of the north boundary of the water-shed of the Sixola and east of the cordillera, the natural boundary was the divide to the north of the Sixola and that formed by the crest of the cordillera. This boundary, accordingly, he fixed, and the Commission, in constantly calling these elevations "divides", have exactly expressed

¹ Supplemental Statement of Commissioner Hodgdon, p. 5.

his meaning. He called the divide from Punta Mona to Chirripó Grande a "counterfort of the cordillera", that from Chirripó Grande to Cerro Pando a "chain of division of waters", and that from Cerro Pando to Punta Burica a "division of waters", but the differences between these descriptions are merely matters of style and language. The purpose and meaning are identical in the three cases.

It is not conceivable that, had President Loubet known (if such were the fact) that the divide between Punta Mona and Chirripó Grande was not, technically a "counterfort", or that the divide between Chirripó Grande and Cerro Pando was not, technically, a "chain", he would have placed the boundary elsewhere. These things have no bearing upon the utility or convenience of making the divides, boundaries. Only the fact that they are divides matters for that purpose. It would be doing little honor to the intelligence of the distinguished arbitrator to suppose that he would have been affected by such matters as technical names or geological formations, on a subject to which they are so irrelevant.

Nor do these matters lead to any uncertainty or doubt as to the meaning of the award. Even were it true that no elevation properly to be called a "counterfort" extends from Punta Mona to the cordillera, there is a ridge which, however it was formed, is now continuous, which does extend from a point directly behind Punta Mona and only $1\frac{1}{2}$ kilometers from it, which, "closes on the north the valley of the Sixola", and there is nothing else which answers that description in any way. It is also true that from the point where this ridge joins the cordillera there is a continuous elevation to Cerro Pando which divides "the waters between the Atlantic and the Pacific." These things the report and maps of the Commission of Engineers have established.¹

What room is left for doubt, or even for argument? How could the meaning and application of the Award be made clearer? Without the survey and detailed maps, indeed, it might not be possible to determine whether the line laid down by President Loubet could, in fact, be drawn, but with them no such question is possible.

There are suggestions in the questions asked for Costa Rica² of a geographical situation different from that which the award contemplates.

We may wonder, now, that such questions were propounded, since they are in so many respects totally and obviously at variance with the real situation, which it would seem that whoever framed them for Costa Rica should have known.

¹ Report of Commission, pp. 49-50.

² Commissioner Hodgdon's Statement, pp. 9 13.

For example Question 6 asks whether Punta Mona is separated from the rest of the delta of the Sixola "by a barrier of impassable swamps many miles in width." All the Commission agree and the maps show that the swamp back of Punta Mona is but from 1.5 to 2.5 kilometers in width¹ and that it was forded during 1912. Commissioner Hodgdon states (and there is no statement to the contrary) that there are trails across this swamp passable at nearly all, if not all, seasons. Since these things are so patent on a mere examination, the reason for asking the question is not apparent.

Now that the survey and report have demonstrated the real facts as to the entire geographic situation, and have shown that it agrees with that contemplated by the Award and differs in every essential respect from that contemplated in the questions submitted for Costa Rica, we can only conclude that the latter were framed under an entire misapprehension as to the real facts. That misapprehension having been thus corrected we must suppose that any objections based upon it will not be urged. Should they be, the maps and report are sufficient to dispose of them.

These questions submitted by Costa Rica must, we assume, be intended to elicit information which will support whatever contentions she intends to make in opposition to the application of the Award as it is written. They lead us, therefore, to make the following observations upon the position which they disclose.

Questions 2, 4 and 6, may have some tendency to elicit information to show, if such were the fact, that there is no elevation starting at Punta Mona which closes to the north the valley of the Sixola. That is, no doubt, a proper subject of inquiry, but the report and the maps, as we have said, show that the actual situation is consistent, and not inconsistent, with the Award and that the situation suggested by the form of these questions does not exist.

Question 1 appears to us immaterial, but otherwise unobjectionable. Commissioners Ashmead and Hodgdon do not differ in their answers to this, as to the fact.

Questions 3, 5, 7, 8, and 9, relate to geological matters, with the purpose of showing that the geological structure of Punta Mona, of the divide and of the cordillera, is such that the two former cannot be considered parts of one organic whole and cannot form, properly speaking, a counterfort of the cordillera. Apart from the fact that the geologist's report does not support but refutes this

¹ Report of Commission, p. 57; Commissioner Ashmead's Statement, p. 30; Commissioner Hodgdon's Statement, pp. 9-13.

contention, the whole subject is, as we have said, in our view, irrelevant. A divide is not made a more suitable boundary because of its geological relation to the mountain or mountain chain where it heads, nor because it is, technically, a counterfort. That it is a continuous divide is the only feature which has a bearing upon its fitness for this purpose. That being ascertained, questions of its relation geologically or in any other way to the other features of the country are irrelevant, and a mistake (if mistake there were) in calling it a counterfort or spur or anything else, so long as it is sufficiently identified, would be immaterial.

Therefore, so far as any objection to the application of the Award, according to its literal language, is disclosed by these questions, it is either answered by the report of the Commission, and their maps, or is of no validity.

We confess our inability to discern any other objection. With the maps and the Award before us, the Award seems perfectly clear and perfectly in accord with the features of the country. A line must, no doubt, be defined across the $1\frac{1}{2}$ to $2\frac{1}{2}$ kilometers—not quite a mile to a mile and a half—across the low saddle between Punta Mona and the point where the divide becomes again visible, to continue so to the cordillera at Chirripó Grande. Beyond that point, the crest of the divide forms a sufficient definition of the boundary to the cordillera at Chirripó Grande; and thence to Cerro Pando the crest of the divide again is a clear description.

The only actual difficulty arising in the application of the Award (and this would have been none had there been a real desire on both sides to carry it out) comes from the fact that for the little distance mentioned, behind Punta Mona, the counterfort sinks so low that its actual crest is not visible nor easily to be ascertained. All the rest of the line is clear and plain, and has now been definitely located by the Commission of Engineers. It remains only to declare that location in order to fix the “correct interpretation and true intention” of the award.

The report and maps of the Commission of Engineers furnish all the elements necessary for such location and show, we submit, that the answer to the question raised by the present arbitration is as follows :

The boundary between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900, begins at the extremity of Point Mona on the Atlantic Ocean and runs thence in a generally northwesterly direction along the crest of said Point

Mona to the swamp in the rear of said Point at the place where the upland makes furthest into the swamp; thence in a straight line in a south-westerly direction across said swamp; thence to and along the crest of the divide which bounds on the north and west the drainage area of Middle Creek to the point where the crest of said divide joins the crest of the divide which bounds on the north the area drained by the River Sixaola and its tributaries; thence along the crest of said last mentioned divide to the central cordillera at or near a point known as Chirripó Grande; thence along the crest of the divide between the waters which flow into the Atlantic and those which flow into the Pacific to a point near the ninth parallel of north latitude; thence along the line of division of waters between the Chiriqui Viejo and the affluents of Golfo Dulce to end at Point Burica on the Pacific Ocean.

EUSEBIO A. MORALES,
 Minister of the Republic of Panama to the
 United States and Special Representative
 of the Republic upon the Arbitration.

WILLIAM NELSON CROMWELL,
 EDWARD BRUCE HILL,
 Counsel of the Republic of Panama.

Appendix A.

(Translated from the Spanish)

CONVENTION OF ARBITRATION BETWEEN THE UNITED STATES OF
 COLOMBIA AND THE REPUBLIC OF COSTA RICA, SIGNED AT SAN
 JOSÉ DECEMBER 25, 1880.

The Republic of Costa Rica and the Republic of the United States of Colombia, equally animated by the sincere desire to maintain and cement their friendly relations; convinced that in order to attain this benefit so vital to their prosperity and good name, it is necessary to close the only source of differences that may arise between them, which is no other than the question of boundaries foreseen in articles VII and VIII of the Convention of March 15, 1825, between Central America and Colombia, and which has subsequently been the subject of diverse treaties between Costa Rica and Colombia none of which has ever been ratified; and both nations understanding that such a precedent counsels the adoption at the present time of another more expeditious, prompt and surer means of settling said question of boundaries, by designating forever a clear and indisputable dividing line along the whole extent where their territories adjoin; therefore, the President of the Republic of Costa Rica in the exercise of the authority with which he is invested has conferred full powers on His Excellency Doctor Don Jose Maria Castro, Secretary of State and of the Office of Foreign Relations; and the President of the United States of Colombia, thereunto specially and sufficiently authorized by the Legislative Bodies of that Nation, on the Honorable Doctor Don Jose Maria Quijano Otero, Charge de'Affaires before this Government; who, after having communicated their respective Full Powers and found them to be in good and due form, have agreed on the following Articles:

ARTICLE I.

The Republic of Costa Rica and the United States of Colombia agree to submit to arbitration, the question of boundaries existing between them, and the fixing of a line which shall divide permanently and clearly, the territory of the first from that of the second, each remaining in full, quiet and peaceful possession, so far as they are

concerned between themselves, of all the land that said line shall leave on their respective sides, which land shall not be subject to any special charge or incumbrance in favor of the other.

ARTICLE II.

The Arbitrator, who, condescending to act as such, shall have to put into execution the stipulation of the preceding Article, shall, in order for it to be valid, carry it out, within ten months, counting from the date of his acceptance, even though one of the parties does not appear and support its rights through a representative or attorney.

ARTICLE III.

In order that the High Contracting Parties may be duly notified of the acceptance of the Arbitrator, and that they cannot plead ignorance thereof, it shall suffice that it be published in an official periodical of the Nation of the Arbitrator, or in that of either of the High Contracting Parties.

ARTICLE IV.

The Arbitrator having heard orally or in writing the parties or party who may appear, and having considered the documents that may be introduced in evidence, or the arguments that may be made, shall render his award without further formality, and that award, whatever it may be, shall thenceforth be regarded as a concluded, perfect, binding and irrevocable treaty between the High Contracting Parties, who waive formally and expressly every appeal of whatsoever nature against the arbitral decision, and they bind themselves promptly, faithfully and forever to observe and fulfil it, pledging thereto their national honor.

ARTICLE V.

In consonance with the foregoing articles and in order to fulfil them, the High Contracting Parties appoint as Arbitrator, his Majesty, the King of the Belgians; in the unexpected event of his declining to accept, then, His Majesty, the King of Spain; and in the equally unexpected event that the latter should also decline, then His Excellency, the President of the Argentine Republic; in all of whom, without any distinction, the High Contracting Parties have the most unbounded confidence.

ARTICLE VI.

The one of the High Arbitrators named, who shall in fact act in the arbitration, may delegate his functions, provided he does not cease to directly intervene in rendering the final judgment.

ARTICLE VII.

If, unfortunately, none of the High Arbitrators named can do the High Contracting Parties the eminent service of accepting the preferred position, the latter, in common accord, shall make new appointments, and so on successively, until some one of them shall take effect, because it is agreed, and it is here formally stipulated, that the question of boundaries and the fixing of a dividing line between the adjacent territories of Costa Rica and Colombia, shall never be decided by other means, than the civilized and humanitarian one of arbitration, the *statu quo*, already agreed to, being preserved meanwhile.

ARTICLE VIII.

The present Convention shall be submitted to the approval of the National Grand Council in the Republic of Costa Rica, and of the Legislative Bodies in that of Colombia ; and the ratifications shall be exchanged in the City of Panama within the shortest possible time.

In faith whereof, the Plenipotentiaries above mentioned sign and affix their respective seals on two originals of this Convention.

Done in the City of San Jose, capital of the Republic of Costa Rica, on the twenty-fifth of December one thousand eight hundred and eighty.

(L. S.) JOSE MARIA CASTRO.

(L. S.) JOSE MARIA QUIJANO OTERO.

Appendix B.

(Translation from the Spanish)

CONVENTION ADDITIONAL TO THAT OF DECEMBER 25, 1880, BETWEEN
THE UNITED STATES OF COLOMBIA AND THE REPUBLIC OF
COSTA RICA, SIGNED AT PARIS JANUARY 20, 1886.

The undersigned, that is to say :

Leon Fernandez, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Costa Rica in Spain, France and Great Britain; and Carlos Holguin, Envoy Extraordinary and Minister Plenipotentiary of the United States of Colombia in Spain, desirous of removing the difficulties that may arise with regard to execution of the Convention of Arbitration concluded between their respective Governments on December 25, 1880; and

CONSIDERING :

1st. That His Majesty the King of Spain, Don Alfonso XII, has been pleased to verbally accept his selection as Arbitrator which the undersigned proposed to him in the name of their respective Governments, to settle the territorial disputes pending between the two Republics, and that therefore, the Convention of Arbitration of December 25, 1880, has already begun to be executed before the Spanish Government;

2nd. That it is to the interest of both Republics to continue there the proposed arbitral suit, not only because in the archives of Spain there are to be found the greater portion of the original documents which will be of service in having the judgment rendered with certainty and full knowledge of the case in the pending boundary question; but also because there is a sufficient number of persons there, who have specially devoted themselves to studies on America, whose opinion and advice will efficaciously contribute to making the judgment conform as nearly to truth and justice as may be; and

3rd. That the very sad and premature death of His Majesty Don Alfonso XII might give rise to a doubt regarding the competency of his successor to continue to exercise jurisdiction over said arbitral suit until final judgment; have agreed to execute the following convention *ad referendum* additional to that signed at San Jose on December 25, 1880, by the Plenipotentiaries of Costa Rica and of the United States

of Colombia, for the adjustment of the boundary question pending between the two Republics :

ARTICLE I.

The Republic of Costa Rica and the United States of Colombia recognize and declare that, notwithstanding the death of His Majesty Don Alfonse XII, the Government of Spain is competent to continue exercising jurisdiction over the arbitration proposed by the two Republics, and to render an irrevocable and final award in the controversy pending concerning the territorial boundaries between the High Contracting Parties.

ARTICLE II.

The territorial limit which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island Escudo de Veraguas, and the River Chiriqui (Calobebora) inclusive ; and on the Pacific side, as far as the River Chiriqui Viejo, inclusive, to the East of Point Burica.

The territorial limit which the United States of Colombia claim reaches, on the Atlantic side, as far as Cape Gracias a Dios, inclusive ; and on the Pacific side, as far as the mouth of the River Golfito and in Gulf Dulce.

ARTICLE III.

The arbitral award shall confine itself to the disputed territory that lies within the extreme limits already described, and cannot affect in any manner any rights that a third party, who has not taken part in the arbitration, may set up to the ownership of the territory comprised within the limits indicated.

ARTICLE IV.

If for any cause, the arbitrator cannot render his award within the vital term which Articles II. of the Convention of Arbitration of December 25, 1880, allots him, the High Contracting Parties agree to extend said term for another ten months, which shall be counted from the date on which the first was to have expired.

ARTICLE V.

Except for the foregoing additions and modifications the Convention of Arbitration of December 25, 1880, shall remain in force in all its parts.

In faith whereof, we sign two of the same tenor authenticated by our respective seals, in the City of Paris on January twentieth, one thousand eight hundred and eighty-six.

(L. S.)

LEON FERNANDEZ.

(L. S.)

CARLOS HOLGUIN.

Appendix C.

(Translation from the Spanish.)

CONVENTION CONFIRMING THE CONVENTIONS OF ARBITRATION OF
1880 AND 1886, SIGNED AT BOGOTA, NOVEMBER 4, 1896.

The Republic of Costa Rica and the Republic of Colombia, desiring to put an end to the question of boundaries between them, and to reach a definite territorial delineation, have agreed to carry out, with the additions and modifications hereinafter set forth, the Conventions of Arbitration which they concluded at San Jose, December 25, 1880, through their Plenipotentiaries, Doctor Don Jose Maria Quijano Otero and Doctor Don Jose Maria Castro, and in Paris on January 20, 1886, through their Plenipotentiaries Doctor Don Carlos Holguin, and Licenciado Don Leon Fernandez, and in order to attain this end, have accredited as Plenipotentiaries, the Government of Costa Rica, Don Ascension Esquivel, its Envoy Extraordinary and Minister Plenipotentiary in Colombia, and the Government of Colombia, Senor General Don Jorge Holguin, Minister of Foreign Relations, who, after having exhibited their Full Powers and found them in due form, have agreed on the following Articles :

ARTICLE I.

The Conventions of Arbitration that have been referred to are declared to be reaffirmed, which shall be observed and executed with the modifications that are set forth in the following Articles.

ARTICLE II.

The High Contracting Parties shall appoint as Arbitrator His Excellency, the President of the French Republic; in the unexpected event that he should not be pleased to accept, His Excellency, the President of the United Mexican States; and in equally unexpected event that he should also decline the task, His Excellency, the President of the Swiss Confederation; in all of whom the High Contracting Parties, without any distinction, have the most unbounded confidence.

The High Contracting Parties make it known that, if upon reaffirming the Conventions of Arbitration, they have not designated as Arbitrator the Government of Spain, which had previously accepted this task, it has been due to the difficulty that Colombia experiences in demanding of said Government so many successive services, having recently signed with Ecuador and Peru a treaty concerning boundaries, in which His Catholic Majesty is appointed Arbitrator, after the laborious suit concerning the Colombia Venezuelan frontier.

ARTICLE III.

The acceptance of the first Arbitrator shall be solicited within three months after the exchange of ratifications of the present Conventions, and if, on account of the refusal of any of the Arbitrators, resort should be had to the next in order, the request for him to accept shall be made within three months after notice to the Parties of such refusal.

If, said three months having expired, either of the Parties should not have appeared to request the acceptance, the one that may be present is authorized to request it, and the acceptance shall be valid just as if both parties had requested it.

ARTICLE IV.

The arbitration shall be conducted in conformity with the following rules:

Within the term of Eighteen months after the High Contracting Parties shall have been notified of the acceptance of the Arbitrator, they shall present to him their arguments and evidence.

In order that the Parties may be considered to have been duly notified of his acceptance, so that they cannot allege ignorance thereof, it shall suffice that it be published in the official periodical of the Nation of the Arbitrator.

The Arbitrator shall communicate to the Representative of each Government the arguments of the opposing party, within three months after their presentation, he may answer them within the following six months.

The Arbitrator, in order that it shall be valid, must render his award within the term of one year counting from the date on which the term granted for answering arguments expires whether the latter have been presented or not.

The Arbitrator may delegate his functions provided he does not cease directly to take part in rendering the final judgment.

The award of the Arbitrator, no matter what may be, shall be considered as a perfect and binding treaty as between the High Contracting Parties, and shall not admit of any appeal. Both Parties bind themselves to its faithful fulfillment, and they waive any appeal against the decision pledging thereto their national honor.

ARTICLE V.

Articles II and IV of the present Convention take the place of Article II to VI inclusive of the Convention of December 25, 1880; and Articles I and IV of that of January 20, 1886. Except for the modifications and additions set forth, which must be fulfilled, the Conventions of Arbitration aforesaid, stand reaffirmed and in force in all their parts.

ARTICLE VI.

The present Convention shall be submitted to the approval of the Congress of Colombia at its present session, and of the Congress of Costa Rica at its next session, and its ratifications shall be exchanged at Panama, San Jose de Costa Rica or Washington in the shortest possible time.

In faith whereof the Plenipotentiaries above designated sign and seal the present Convention at Bogota, November the fourth, one thousand eight hundred and ninety-six.

(L. s.) ASCENSION ESQUIVEL.

(L. s.) JORGE HOLDGUIN.

Appendix D.

AWARD OF PRESIDENT LOUBET OF SEPTEMBER 11TH, 1900.

(Translated from the French)

We, President of the French Republic, Arbitrator, by virtue of a treaty signed, November 4, 1896, at Bogota, by the Republics of Columbia and Costa Rica, an instrument which has conferred on us full power to pass upon, according to the principles of law and historic precedents, the boundary to be delimited between the two above named States ;

Upon examination of all the documents furnished by the parties litigant, and especially :

1st : With regard to Columbia :

On the statement of Don Francisco Silvela, counsel of the Legation of Colombia in Spain ;

Of the second and third Memorials presented in the name of the Republic of Columbia, by Mr. Poincaré, of the Bar of the Court of Appeals of Paris ;

Of an opinion of Mr. Maura, Deputy in the Spanish Cortes, President of the Royal Academy of Jurisprudence of Madrid, upon the boundary question between Columbia and Costa Rica ;

Of another opinion of Dr. Simon de la Rosa y Lopez, Professor of Political Law at the University of Seville, and his collaborators ;

Of a chronological Summary of the muniments of territorial title of Colombia ; and

Of the numerous geographic maps and texts, in the original, as well as translated and annotated, delivered to us by the representative of Colombia, specially accredited to us for the present dispute ;

2nd : With regard to Costa Rica :

Of the Works of Mr. Manuel M. de Peralta, Envoy Extraordinary and Minister Plenipotentiary of that Republic at Paris, entitled :

“ *Limites de Costa Rica y Colombia.* ”

“ *Costa Rica y Costa y Mosquitos.* ”

“ *Jurisdiction territoriale de Costa Rica.* ”

Of the Statement of the muniments of territorial title of the Republic of Costa Rica ;

Of the Reply to the Statement of the Republic of Colombia ;

Of the Historico-Geographic Atlas of Costa Rica, Veragua and the Mosquito Coast ;

Of the volume of Mr. Peralta, "*Historical Geography and Territorial Rights of Costa Rica*" ;

Etc., etc.,

And in general of all the decisions, capitulations, royal orders, provisions, royal cédulas, laws, decreed and promulgated by the ancient Spanish Monarchy, absolute sovereign with the right freely to dispose of the territories which have subsequently become part of the two Republics ;

Having made a minute and profound study of said instruments, to us submitted by the parties, especially of the royal cédulas of July 27, 1513, of September 6, 1521, of the royal provision of April 21, 1529, of the royal cédulas of March 2, 1537, of January 11, and May 9, 1541, of January 21, 1557, of February 23 and July 18, 1560, of August 4, and 9, 1561, of September 8, 1563, of June 28, 1568, of July 17, 1572, of the Capitulation of Pardo of December 1, 1573, of the Recopilation of the Laws of the Indies of 1680, particularly of Laws IV, VI, IX of that compilation, of the royal cédulas of July 21, and November 13, 1722, of August 20, 1729, of May 24, 1740, of October 31, 1742, of November 30, 1756, of the different instructions emanating from the Spanish Sovereign and addressed to the Superior Authorities of the Vice Royalty of Santa Fé as well as those of the Captaincy General of Guatemala in the course of the eighteenth century, and in the years following ; of the royal orders of 1803 and 1805, of the stipulations of the treaty concluded in 1825 between the two independent Republics, etc., etc.

And conscious of the importance of our high mission as well as of the very great honor that has been shown us in being chosen as judge in the present dispute, having neglected nothing to obtain an exact appreciation of the weight of the documents relied on by each of the two countries ;

DECIDE :

The Frontier between the Republics of Colombia and Costa Rica shall be formed by the counterfort of the cordillera which starts from Cape Mona, on the Atlantic Ocean, and closes on the North the valley of the Tariare or Rio Sixola ; then by the chain of division of waters between the Atlantic and Pacific, to nine degrees, about,

of latitude ; it will follow then the line of division of waters between the Chériqui Viejo and the affluents of Gulf Dulce, to end at Point Burica on the Pacific Ocean.

As regards the islands, groups of islands, keys, banks, situated in the Atlantic Ocean, near the coast, East and Southeast of Point Mona, these islands, whatever their names and extent, shall form part of the territory of Colombia. Those which are situate to the West and Northwest of said point shall belong to the Republic of Costa Rica.

As to the islands farther distant from the mainland and included between the Mosquito Coast and the Isthmus of Panama, to wit : Mangle Chico, Mangle Grande, Cayos de Alburquerque, San Andres, Santa Catalina, Providencia, Escudo de Veragua, as well as all other islands, keys and banks, belonging to the ancient Province of Cartagena, under the name of Canton de San Andres, it is understood that the territory of these islands without any exception, belongs to the United States of Colombia.

On the Pacific Coast, Colombia shall likewise possess, beginning from the Burica Islands, and including these, all the islands situate to the East of the point of the same name, those situate to the West of this point being awarded to Costa Rica,

Done at Rambouillet, in duplicate, September 11, 1900.

(Signed) EMILIE LOUBET.

(Seal of the President)

Appendix E.

LETTER FROM MR. DELCASSE, FRENCH MINISTER OF FOREIGN AFFAIRS TO SENOR DE PERALTA, COSTA RICAN MINISTER TO PARIS.

(Translation from the French.)

Copy.

PARIS, September 18, 1900.

MR. MINISTER :

In the third paragraph of the dispositive part of the arbitral award rendered by the President of the Republic on the eleventh of this month, in regard to the boundary

between Colombia and Costa Rica, the words, "United States of Colombia," have been employed to designate the Republic of Colombia.

In the name of the Arbitrator, I have the honor to notify you, to the end of avoiding all confusion in the future, that these two designations should be considered as synonymous, in the instrument in question, and that they apply alike to the State of Colombia.

Accept the assurance of the high consideration, with which I have the honor to be, Mr. Minister,

Your very humble and very obedient servant,

DELGASSÉ.

MR. PERALTA,

Minister of Costa Rica at Paris.

Appendix F.

LETTER OF SENOR DE PERALTA, COSTA RICAN MINISTER AT PARIS TO M. DELCASSE, FRENCH MINISTER OF FOREIGN AFFAIRS.

(Translation from the Spanish)

LEGATION OF COSTA RICA.

PARIS, September 29, 1900.

MR. MINISTER :

Wishing to avoid all possible confusion with respect to the intentions of His Excellency, the President of the French Republic, Arbitrator in the dispute concerning territorial boundaries between the Republics of Costa Rica and Colombia, as they appear from the arbitral award, which he was pleased to pronounce on the eleventh of this month, I have the honor to address Your Excellency in order respectfully to state to you that the Government of the Republic of Costa Rica interprets the first paragraph of the dispositive portion of the decision in the following manner :

“ The boundary between the Republics of Costa Rica and Colombia
“ shall be formed by the counterfort of the cordillera which starts from Cape
“ Mona, on the Atlantic Ocean, and closes on the North the valley of the

“ Rio Tarire or Sixaola near the mouth of that river ; it will follow in a West-Southwesterly direction along the left bank of this river, as far as the confluence of the River Yurquin or Zhorquin (called also Sixaola, Culebras, or Dorados) to longitude 82° 50' West of Greenwich 85° 10' West Paris, and 9° 33' North latitude. Here the boundary line will cross the thalweg of the Tarire on the left bank of the Yurquin, and will continue in a Southerly direction along the chain of division of waters between the basins of the Yurquin on the East and of the Uren on the West ; thereafter along the chain of division of waters between the Atlantic and Pacific as far as about the ninth degree of latitude ; it shall thence follow the line of division of waters between the Chiriqui Viejo and the affluents of Gulf Dulce, to terminate at Point Burica.”

Point Mona is situated at Longitude 82° 39' West of Greenwich, 84° 59' West of Paris, and 9° 39' North latitude.

Point Burica is situated at Longitude 82° 53' West of Greenwich, 85° 15' West of Paris, and 8° 2' North Latitude.

The intersection of the boundary line with the ninth parallel is at longitude 82° 45' West of Greenwich, 89° 5' West of Paris.

This interpretation conforms with the evident intentions of the Arbitrator and with the configuration of the territory as well as with the terms of the agreement of arbitration.

It perfectly corresponds to the desire of establishing with certainty and stability a natural boundary, and there is but a very slight departure from a right line drawn between Point Mona and Point Burica, which is, so to say, the fundamental idea of the Arbitrator.

I hope that this interpretation will be accepted by His Excellency, the President of the French Republic, as corresponding as nearly as possible with his lofty intentions, and my Government would thank him very much if he should be pleased to confirm this interpretation by an explanatory instrument.

Please accept, Mr. Minister, the expressions of the very high consideration, with which, I have the honor to be, Your Excellency's very humble and very obedient servant.

(Signed)

MANUAL M. PERALTA.

His Excellency Señor Delcassé
Minister of Foreign Affairs
of the French Republic.

Appendix G.

MINISTRY OF FOREIGN AFFAIRS.

PARIS, November 23, 1900.

MR. MINISTER :

Answering the request which you have been pleased to express in your letters of September 29th and October 23rd ultimo, I have the honor to inform you that, on account of the lack of exact geographic data, the Arbitrator was not able to fix the boundary except by means of general indications ; I think, therefore, that there would be difficulty in fixing them on a map. But there is no doubt, as you observe, that, in conformity with the terms of articles 2 and 3 of the Convention of Paris of January 20, 1886, this boundary line must be drawn within the confines of the territory in dispute, as they are determined by the text of said articles.

It is in accordance with these principles that it is for the Republics of Columbia and Costa Rica to proceed to the physical delimitation of their frontiers, and the Arbitrator trusts, on this point, to the spirit of conciliation and good understanding with which the two Governments in litigation have up to the present been inspired.

Accept the assurances of the high consideration, with which, I have the honor to be, Mr. Minister, your very humble and obedient servant.

(Signed) DELCASSÉ.

MR. MANUEL DE PERALTA,
Minister of Costa Rica in Paris.

BD 3. 141

EL PALMAR

✓
EL PALMAR



A T L A N

9° 40'

C

O C E A N

PUNTA MONA

MANZANILLO POINT

SWAMP
Middle
Creek

Dotted Coast Line from Hydrographic Office Chart No. 545

9° 35'

Aliso Creek

Aliso Creek

Gadokan

Aliso

La Caña

Niguas

Aliso

ILA PALMA

Creek

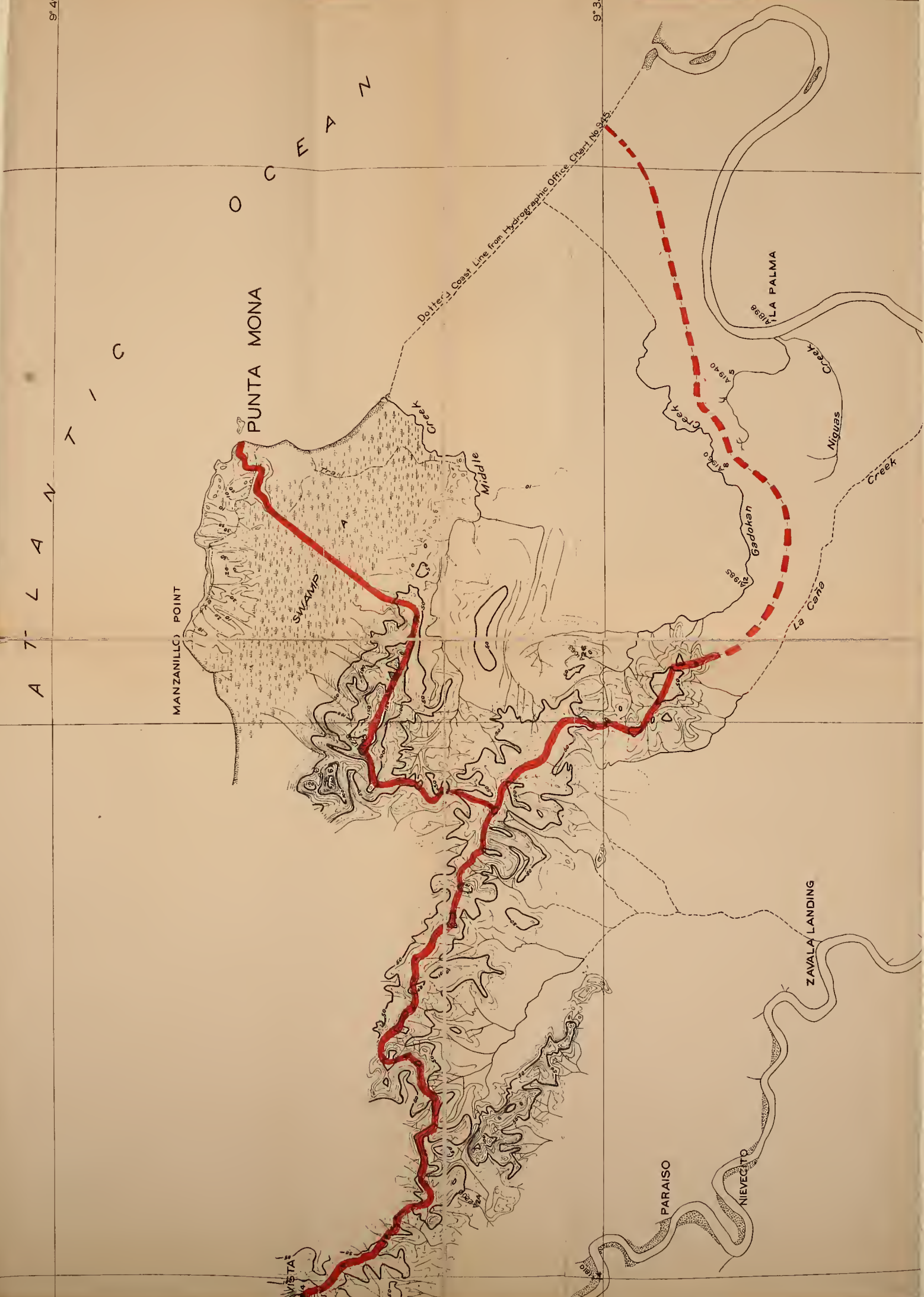
Creek

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